

## **REMARKS**

Claims 1, 16, 31 and 33 have been amended and claims 34-49 have been added. Therefore, claims 1-49 are now pending in the application.

In the specification, the paragraphs starting respectively at page 4, line 22, page 5, line 6, and page 8 line 17 have been amended to correct minor editorial problems as shown in the specification amendments above. No new matter has been entered.

### **Claim Objections:**

The Examiner objected to claim 1 because of informalities. Applicant submits that this objection has been overcome by the amendment to claim 1.

### **Section 103(a) Rejection:**

The Examiner rejected claims 1, 4, 12-16, 19 and 27-31 under 35 U.S.C. § 103(a) as being unpatentable over Yuan et al. (U.S. Patent 5,567,378) (hereinafter "Yuan") in view of Lazraq (U.S. Patent 6,330,435) (hereinafter "Lazraq"). Applicant respectfully traverses this rejection in light of the following remarks.

As Examiner has already stated, Yuan does not teach the conveying of a second packet in response to detecting a fault in the network. The Examiner relies on Lazraq in regard to this aspect of claim 1. However, Lazraq only teaches including the sequence numbers of dropped cells in a data packet discard notification (DPDN) message. The sequence number do not indicate what type of packet was dropped. Yuan in view of Lazraq therefore fails to teach conveying a second packet including intention information about said first packet, wherein said intention information includes an indication of the type of said first packet, as cited in Applicant's claims 1, 16 and 31.

In regard to claims 4 and 19, Examiner states that Lazraq teaches “conveying a third packet to said first device in response to receiving said second packet.” Applicant disagrees with Examiner’s interpretation of Lazraq. Figure 7 of Lazraq shows that a retransmission request occurs on when a receiver has not received a data packet discard notification (Figure 7, steps 710, 716, and 720). Lazraq makes this clear in column 4, lines 1-9, where if a received message is a DPDN, the receiver only calculates and discards those cells specified in the DPDN. Applicant asserts that the retransmission request in Lazraq claim 12 is in response to not receiving a DPDN as stated in Lazraq column 4, lines 10 – 35. Thus, Lazraq teaches away from claims 4 and 19.

The Examiner states that claims 12 and 27 are “obvious as a matter of design choice.” This is not a proper basis for rejection. The statute clearly places a burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103. *In re Warner*, 154 USPQ 173, 177 (C.C.P.A. 1967), *cert. denied*, 389 U.S. 1057 (1968). The Examiner’s statement that the claim limitations are a matter of design choice is a conclusory statement with no factual basis. The Examiner has not provided any prior art reference establishing the obviousness of the recited claim limitation in combination with the other limitations of Applicant’s claimed invention. “Deficiencies of the cited references cannot be remedied by the [Examiner’s] general conclusions about what is ‘basic knowledge’ or ‘common sense.’” *In re Zurko*, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001).

In regard to claims 14-15 and 29-30, the Examiner takes official notice that “congestion is only one of the many reasons why discard packet notification messages are sent” and that “[o]ther adverse conditions may include corruption of data based upon a CRC or a path failure, which may lead to congestion.” Pursuant to M.P.E.P. § 2144.03, Applicant traverses the Examiner’s taking of official notice. Applicant asserts that it was not well known in the prior art that congestion is only one of the many reasons why discard packet notification messages are sent and that other adverse conditions may include corruption of data based upon a CRC or a path failure, which may lead to congestion. Pursuant to M.P.E.P. § 2144.03 Applicant asserts that “the examiner must

provide documentary evidence in the next Office action if the rejection is to be maintained. See also 37 CFR 1.104(c)(2), (d)(2) and *In re Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001).

**Allowable Subject Matter:**

Claims 2-3, 5-11, 17-18, 20-26 and 32-33 were objected to as being dependent upon a rejected base claim but otherwise allowable if rewritten in independent form. Accordingly, applicant has added new independent claims 34-49, which correspond to the abovementioned allowable subject matter.

### CONCLUSION

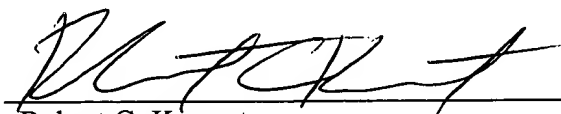
Applicant submits the application is in condition for allowance, and notice to that effect is requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicant hereby petitions for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5181-55200/RCK.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☐ Petition for Extension of Time
- ☐ Notice of Change of Address
- ☐ Fee Authorization Form authorizing a deposit account debit in the amount of \$  
for fees (        ).
- ☐ Other:

Respectfully submitted,



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